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## Cases, Regulations and Statutes

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# CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

## BANKRUPTCY

### GENERAL

#### EXEMPTIONS

IRA. The debtors, husband and wife, filed for Chapter 13. The wife owned an IRA which was funded by receiving funds from a deceased parent's IRA. The debtors claimed the funds in the IRA as exempt under Section 522(d)(12) as retirement funds. The Bankruptcy Court held that the wife's IRA was not eligible for the exemption because the wife could withdraw the funds at any time and the IRA was not exempt from taxation. On appeal, the district court reversed, holding that the inherited IRA was tax exempt and eligible for the retirement fund exemption. On further appeal, the appellate court affirmed. *In re Chilton*, 2012-1 U.S. Tax Cas. (CCH) ¶ 50,250 (5th Cir. 2012), *aff'g*, 2010-1 U.S. Tax Cas. (CCH) ¶ 50,275 (Bankr. E.D. Tex. 2010).

## FEDERAL FARM PROGRAMS

**LIVESTOCK REPORTING.** The AMS has issued proposed regulations which, under Livestock Mandatory Reporting Act of 1999 and the 2010 Reauthorization Act, require packers to report wholesale pork sales to AMS. The proposed rule outlines what information packers will be required to submit to AMS, how the information should be submitted, and other program requirements. Packers will be required to submit the price of each sale, quantity, and other characteristics (e.g., type of sale, item description, destination) that AMS will use to produce timely, meaningful market reports. 77 Fed. Reg. 16951 (March 23, 2012).

## FEDERAL ESTATE AND GIFT TAXATION

**ADMINISTRATION EXPENSES.** Prior litigation, *Estate of Black v. Comm'r*, 133 T.C. 340 (2009), had established that the estate was allowed a deduction for fees for a trustee of a trust established by the decedent's will because the trustee's services were related to administration of the estate. That case also determined that a deduction was allowed for attorney fees for tax return preparation. The issue in the current case is the amount of trustee and attorney fees allowed in addition to those approved in prior litigation. The court looked to state, Pennsylvania, law

for the standard to be applied and found that Pennsylvania's standard was based on the "complexity of the matters handled by the trustee and the amount of time and effort . . . required." 20 Pa. Cons. Stat. § 7768. The estate argued that the trustee dealt with complex and difficult issues and was entitled to additional compensation; therefore, the estate was entitled to a deduction for the additional compensation. The court found that the trustee's work did not involve sufficient issues of complexity, either in the legal or accounting aspects of the trust property which was primarily passive assets; therefore, the court held that the estate would be allowed a deduction for only a portion of the trustee fees paid. Similarly, the estate was not allowed a deduction for most of the attorney fees paid because the tax returns were not complex and were based on prior work which had been adequately compensated. **Estate of Black v. Comm'r, T.C. Memo. 2012-63.**

The decedent's estate borrowed funds from the decedent's former spouse because the estate did not have sufficient liquid assets to pay the federal estate tax. At the time of the loan, the former spouse and the estate believed it had sufficient assets to repay the loan with interest, but the estate property eventually was sold for far less and the estate only had enough funds to pay the interest on the loan. The court held that the loan was a bona fide debt and that the estate could deduct the interest paid on the loan. **Estate of Kahanic v. Comm'r, T.C. Memo. 2012-81**

**ESTATE PROPERTY.** The decedent's estate included a life insurance policy on the life of the decedent. The decedent's former spouse was the named beneficiary under a divorce settlement agreement which required the decedent to make the spouse the beneficiary as security for fulfilling other terms of the agreement. The court held that, although the decedent retained a reversionary interest in the insurance policy, the policy was deemed exchanged for full and adequate consideration because it was maintained as part of the negotiated divorce settlement agreement in accordance with I.R.C. Sec. 2516. **Estate of Kahanic v. Comm'r, T.C. Memo. 2012-81.**

The decedent had been declared by a probate court to be incompetent due to Alzheimer's disease. The decedent's children were named guardians and they were concerned about the managing of the property owned by the decedent. The family consulted an attorney and established three limited partnerships, one for each child, and a corporation to manage the properties as general partner in each partnership. During the decedent's life, the partnership interests were gifted to the children. After the transfer of the properties to the partnerships, the decedent still retained significant liquid assets. The children provided services to the corporation and the corporation was paid a reasonable management fee by the partnerships. The court held that the partnerships were created for a legitimate non-tax purpose, management of the properties, and the decedent received partnership interests proportionate to the property contributed to the partnership. The court held that the partnership interests transferred to the children were not included

in the decedent's estate. **Estate of Kelly v. Comm'r, T.C. Memo. 2012-73.**

## FEDERAL INCOME TAXATION

**CHARITABLE DEDUCTIONS.** The IRS has published guidance on charitable deductions. (1) Taxpayers must be giving to a qualified organization. Also, taxpayers cannot deduct contributions made to specific individuals, political organizations or candidates. See IRS Publication 526, *Charitable Contributions*, for rules on what constitutes a qualified organization. (2) To deduct a charitable contribution, taxpayers must file Form 1040 and itemize deductions on Schedule A. If the total deduction for all noncash contributions for the year is more than \$500, taxpayers must complete and attach IRS Form 8283, *Noncash Charitable Contributions*, to the return. (3) If taxpayers receive a benefit because of a contribution such as merchandise, tickets to a ball game or other goods and services, then taxpayers can deduct only the amount that exceeds the fair market value of the benefit received. (4) Donations of stock or other non-cash property are usually valued at the fair market value of the property. Clothing and household items must generally be in good used condition or better to be deductible. Special rules apply to vehicle donations. (5) Fair market value is generally the price at which property would change hands between a willing buyer and a willing seller, neither having to buy or sell, and both having reasonable knowledge of all the relevant facts. (6) Regardless of the amount, to deduct a contribution of cash, check, or other monetary gift, taxpayers must maintain a bank record, payroll deduction records or a written communication from the organization containing the name of the organization and the date and amount of the contribution. For text message donations, a telephone bill meets the record-keeping requirement if it shows the name of the receiving organization, the date of the contribution and the amount given. (7) To claim a deduction for contributions of cash or property equaling \$250 or more, taxpayers must have a bank record, payroll deduction records or a written acknowledgment from the qualified organization showing the amount of the cash, a description of any property contributed, and whether the organization provided any goods or services in exchange for the gift. One document may satisfy both the written communication requirement for monetary gifts and the written acknowledgment requirement for all contributions of \$250 or more. (8) Taxpayers donating an item or a group of similar items valued at more than \$5,000 must also complete Section B of Form 8283, which generally requires an appraisal by a qualified appraiser. For more information on charitable contributions, refer to Form 8283 and its instructions, as well as Publication 526, *Charitable Contributions*. **IRS Tax Tip 2012-57.**

**CHARITABLE ORGANIZATIONS.** The Internal Revenue Service has launched a new online search tool, Exempt Organizations Select Check, to help users more easily find key

information about tax-exempt organizations, such as federal tax status and filings. Users can now go to one location on IRS.gov, select a tax-exempt organization, and check if the organization: (1) is eligible to receive tax-deductible charitable contributions (Publication 78 data, which is incorporated there); (2) has had its federal tax exemption automatically revoked under the law for not filing a Form 990-series return or notice for three consecutive years (known as the Auto-Revocation List); and (3) has filed a Form 990-N (e-Postcard) annual electronic notice. EO Select Check also offers improved search functions and organizations that have automatically lost their tax exemptions may now be searched by EIN, name, city, state, ZIP Code, country, exemption type, and revocation posting date, rather than only by state. **IR-2012-34.**

**CONSERVATION EASEMENTS.** The taxpayers, husband and wife, contributed conservation easements on more than 400 acres of rural property. Although the easements allowed the taxpayers to retain a number of rights as to the property, including the right to sell 12 residential lots, the court held that the easements did provide protection for natural habitat of wildlife. The main issue was the value of the easements and the court examined three appraisals provided by the taxpayers and IRS and added a few factors, such as zoning requirements, lot size restrictions and unaccepted purchase offers. Thus, the court upheld the deductions for the conservation easements at the value determined by the court. **Butler, Jr. v. Comm'r, T.C. Memo. 2012-72.**

### CORPORATIONS

**EMPLOYEE EXPENSES.** The taxpayer was a nonprofit, tax-exempt apostolic corporation formed by a Hutterite Community which operated a dairy. The issue was whether the president of the corporation was an employee of the corporation. The corporation was controlled through voting by the members; therefore the work of each member was controlled by the corporation through the voting of the members. The appellate court held that the president was an employee of the corporation, as with all the members, because the president's work was set by the corporation through its members. On remand, the issue was whether the meals and medical care for the members were deductible by the corporation. The court held that the cost of the meals were deductible because the members received the meals, as well as other costs, as part of their compensation and the members worked around the clock. The medical expenses were also deductible as a plan for employees. **Stahl v. United States, 2012-1 U.S. Tax Cas. (CCH) ¶ 50,255 (E.D. Wash. 2012), on rem. from, 2010-2 U.S. Tax Cas. (CCH) ¶ 50,744 (9th Cir. 2010), rev'g and rem'g, 2009-2 U.S. Tax Cas. (CCH) ¶ 50,785 (E.D. Wash. 2009).**

**COURT AWARDS AND SETTLEMENTS.** The taxpayer filed suit against an employer for disability discrimination under state employment law. The suit sought damages for lost wages, attorney's fees, punitive damages, general damages, damages for emotional distress and litigation costs. The suit was decided by an arbitrator who ruled for the taxpayer, awarding money plus attorney's fees and general costs. The taxpayer did not

declare any of the award as taxable income because the taxpayer's attorney in the case said that none of the award was taxable. The court held that the total award was taxable income because neither the original suit nor the arbitrator's award specifically mentioned any physical injury resulting from the employer's actions which were the core of the lawsuit. The case does not discuss any deductions available for the attorney's fees or litigation costs. **Neri v. Comm'r, T.C. Memo. 2012-71.**

**DEPRECIATION.** The taxpayer was a corporation which hired a tax manager to prepare and file all returns. The tax manager failed to timely file the taxpayer's return and to make the elections under I.R.C. § 168(g)(7) to use the Alternate Depreciation System for all tangible depreciable property, and to make the election under I.R.C. § 168(k) not to deduct the additional first year depreciation for all classes of qualified property, placed in service by the taxpayer in the tax year. The taxpayer also failed to make an election under I.R.C. § 59(e) for the taxable year to amortize its intangible drilling costs ratably over a 60-month period and to amortize its exploration costs ratably over a 10-year period. The IRS granted the taxpayer an extension of time to make all three elections. **Ltr. Rul. 201210011, Dec. 5, 2011.**

The taxpayer was a corporation which hired a tax director to prepare and file all returns. The tax director timely filed the taxpayer's return but failed to make the elections under I.R.C. § 168(k) not to deduct the additional first year depreciation for all classes of qualified property placed in service by the taxpayer in the tax year. The IRS granted the taxpayer an extension of time to make the election. **Ltr. Rul. 201210005, Dec. 6, 2011.**

**DIVIDENDS.** The taxpayers owned stock in several Canadian companies through a brokerage account. The brokerage send the taxpayers a Form 1099-DIV listing dividends distributed by the companies. However, the taxpayers claimed only a small portion of the dividends as taxable dividends because the taxpayers relied on an analysis of the companies' earnings and profits for the tax year involved. The taxpayers argued that the distributions at issue constituted returns of capital and not dividend distributions because the Canadian entities did not have sufficient current or accumulated earnings and profits from which a dividend distribution could be made. The IRS countered that three items demonstrated that the distributions were dividends: (1) the Form 1099-DIV issued by the brokerage; (2) the taxpayers' Form 1116, on which they reported the distributions as taxable foreign source income for purposes of claiming the foreign tax credit; and (3) news releases from the Canadian entities directing U.S. shareholders to treat the distributions as taxable dividends rather than returns of capital. The court acknowledged that the distributions would not be dividends if the companies did not have sufficient earnings and profits; however, the court held that the taxpayers failed to provide sufficient evidence of the earnings and profits and that the taxpayers' calculation of the earnings and profits were not based on sufficient information. Therefore, the IRS determination that the distributions were dividends was upheld. **Juha v. Comm'r, T.C. Memo. 2012-68.**

**EMPLOYEE EXPENSES.** The IRS has published guidance to help taxpayers determine which expenses are deductible as an employee business expense. Taxpayers must be itemizing deductions on IRS Schedule A to qualify for such deductions. Expenses that qualify for an itemized deduction generally include:

- Business travel away from home
- Business use of your car
- Business meals and entertainment
- Travel
- Use of the home
- Education
- Supplies
- Tools
- Miscellaneous expenses

Taxpayers must keep records to prove the business expenses deducted. For general information on recordkeeping, see IRS Publication 552, *Recordkeeping for Individuals*. If an employer reimburses a taxpayer under an accountable plan, the taxpayer should not include the payments in gross income and may not deduct any of the reimbursed amounts. An accountable plan must meet three requirements: (1) The taxpayer must have paid or incurred expenses that are deductible while performing services as an employee. (2) The taxpayer must adequately account to the employer for these expenses within a reasonable time period. (3) The taxpayer must return any excess reimbursement or allowance within a reasonable time period. If the plan under which the taxpayer is reimbursed by an employer is non-accountable, the payments received should be included in the wages shown on Form W-2. Taxpayers must report the income and itemize deductions to deduct these expenses. Generally, taxpayers report unreimbursed expenses on IRS Form 2106 or IRS Form 2106-EZ and attach it to Form 1040. Deductible expenses are then reported on IRS Schedule A as a miscellaneous itemized deduction subject to a rule that limits employee business expenses deductions to the amount that exceeds 2 percent of a taxpayer's adjusted gross income. For more information see IRS Publication 529, *Miscellaneous Deductions*. **IRS Tax Tip 2012-54.**

**HOBBY LOSSES.** The taxpayers, husband and wife, operated a horse breeding activity on a 40 acre farm. The wife provided most of the work on the operation and was employed full time in a retail shop. The husband provided occasional help on weekends. The court held that the activity was engaged in with the intent to make a profit because (1) the taxpayers kept accurate records and a separate bank account and used the records to make changes in the operation to cut costs, (2) the taxpayers made several changes that cut costs and consulted with other business owners for ways to increase income, (3) the taxpayers obtained education and skills to develop expertise in breeding horses, (4) the taxpayers did not use the horses for personal pleasure and spent a significant amount of their free time on the activity, (5) most of the losses were incurred during the start-up phase of the operation, and (6) much of the losses were related to events outside the control of the taxpayers, such as a downturn in the horse industry and the

wife's illness. **Ryberg v. Comm'r, T. C. Summary Op. 2012-24.**

**INDEPENDENT CONTRACTORS.** The taxpayer owned 50 percent of an auto repair shop, focusing primarily on auto body repair. The shop employed several workers who performed various portions of body repair, each essentially working on a specialty skill in body repair. The taxpayer treated the workers as independent contractors but the IRS assessed employment taxes based on the workers being classified as employees. The court looked at several factors and held that the workers were independent contractors because (1) the taxpayer did not control the work of each worker, (2) the workers could leave employment at will or be discharged by the taxpayer at will, (3) the workers and taxpayer intended an independent contractor relationship, and (4) no employment benefits were provided to the workers. **Keller v. Comm'r, T.C. Memo. 2012-62.**

**INTEREST FROM GOVERNMENTAL OBLIGATIONS.** The taxpayers received money from a settlement with a state for a condemnation award from property owned through several partnerships. The award was to be paid with interest over five years. The taxpayers excluded the installment interest under I.R.C. § 103 as interest earned on a governmental obligation. The Tax Court held that the interest was not eligible for Section 103 non-taxable treatment because the interest was not paid by the state on obligations issued under the state's borrowing authority. On appeal the appellate court reversed, holding that, because the installment interest obligation arose out of the award negotiations, the interest was considered as part of the state's obligation and eligible for Section 103 treatment. **DeNaples v. Comm'r, 2012-1 U.S. Tax Cas. (CCH) ¶ 50,249 (3d Cir. 2012), aff'g in part and rev'g in part, T.C. Memo. 2011-46, aff'g on reconsideration, T.C. Memo. 2010-171.**

**QUALIFIED FOSTER CARE PAYMENTS.** The taxpayers owned two houses and converted one into a foster care facility. Although the facility had some extra sleeping areas, they were used by the staff on duty. The taxpayers' other house was used for family gatherings, and was the home of the taxpayers' minor children. The taxpayers claimed payments from the state for the foster care as excluded from taxable income under I.R.C. § 131. However, the Section 131 exclusion was allowed only for foster care of "a qualified foster individual in the foster care provider's home." The court held that the taxpayers' second house was their home for purposes of Section 131 and the payments were taxable income. **Stromme v. Comm'r, 138 T.C. No. 9 (2012).**

**RETURNS.** The IRS has issued proposed regulations that provide rules requiring any person assigned an employer identification number to provide updated information to the IRS in the manner and frequency prescribed by forms, instructions, or other appropriate guidance. **77 Fed. Reg. 15004 (March 14, 2012).**

## S CORPORATIONS

**ELIGIBLE SHAREHOLDERS.** The taxpayer was an S corporation which had a custodial Roth IRA account as its sole shareholder. The corporation argued that the Roth IRA

was an eligible shareholder because it was a grantor trust; however, the court rejected this argument, holding that the IRA was not a grantor trust because the beneficiary was taxed only as to distributions actually made by the IRA. The court held that the taxpayer was taxable as a C corporation because it had an ineligible shareholder. See Harl, "Can a Roth IRA be a Shareholder in an S Corporation?" 20 *Agric. L. Dig.* 153 (2009). **Taproot Administrative Services, Inc. v. Comm'r, 2012-1 U.S. Tax Cas. (CCH) ¶ 50,256 (9th Cir. 2012), aff'g, 133 T.C. 202 (2009).**

**STOCK OPTIONS.** The taxpayer received non-statutory stock options as part of employment compensation from a corporation. The stock was not publicly traded but was traded on a sporadic basis by a brokerage. The taxpayer exercised the option soon after employment was terminated and the corporation determined the fair market value of the stock at the time of exercise and issued a Form W-2 listing the difference between the fair market value and the option price as income to the taxpayer. The taxpayer attempted to sell the stock through a brokerage but was unable to do so because the financial condition of the corporation had deteriorated substantially and the corporation filed for bankruptcy. The taxpayer sought a refund of taxes paid on the original exercise of the option, arguing that the stock was valued too high. The court noted a significant lack of supporting evidence or any expert testimony on the stock's value. The court held that subsequent events with the corporation could not be used to affect the stock exercise value because the financial problems were not known at that time. With little else to support its finding, the court relied on the recorded sales of the stock by the brokerage which were consistent with the value set by the corporation at the time of the option exercise; therefore, the court upheld the IRS denial of any refund based on a lower value of the stock at the time of the option exercise. **Sheedy v. Comm'r, T.C. Memo. 2012-69.**

## SAFE HARBOR INTEREST RATES

### APRIL 2012

	Annual	Semi-annual	Quarterly	Monthly
<b>Short-term</b>				
<b>AFR</b>	0.25	0.25	0.25	0.25
110 percent AFR	0.28	0.28	0.28	0.28
120 percent AFR	0.30	0.30	0.30	0.30
<b>Mid-term</b>				
<b>AFR</b>	1.15	1.15	1.15	1.15
110 percent AFR	1.27	1.27	1.27	1.27
120 percent AFR	1.38	1.38	1.38	1.38
<b>Long-term</b>				
<b>AFR</b>	2.72	2.70	2.69	2.68
110 percent AFR	2.99	2.97	2.96	2.95
120 percent AFR	3.27	3.24	3.23	3.22

**Rev. Rul. 2012-11, I.R.B. 2012-14.**

**SELF-EMPLOYMENT.** The IRS has published information for self-employed taxpayers concerning the deduction for medical, dental or long-term care insurance for the taxpayer, spouse, and dependents. Starting in tax year 2011, this deduction is no longer allowed on Schedule SE (Form 1040), but taxpayers can still take it on Form 1040, line 29. Taxpayers must be one of the following to qualify: (1) A self-employed individual

with a net profit reported on Schedule C (Form 1040), *Profit or Loss From Business*, Schedule C-EZ (Form 1040), *Net Profit From Business*, or Schedule F (Form 1040), *Profit or Loss From Farming*. (2) A partner with net earnings from self-employment reported on Schedule K-1 (Form 1065), *Partner's Share of Income, Deductions, Credits, etc.*, box 14, code A. (3) A shareholder owning more than 2 percent of the outstanding stock of an S corporation with wages from the corporation reported on Form W-2, *Wage and Tax Statement*. The insurance plan must be established under the taxpayer's business.

**Sole-proprietors.** For self-employed individuals filing a Schedule C, C-EZ, or F, the policy can be either in the name of the business or in the name of the individual.

**Partners.** For partners, the policy can be either in the name of the partnership or in the name of the partner. Taxpayers can either pay the premiums or the partnership can pay them and report the premium amounts on Schedule K-1 (Form 1065) as guaranteed payments to be included in a partner's gross income. However, if the policy is in the partner's name and the partner pays the premiums, the partnership must reimburse the partner and report the premium amounts on Schedule K-1 (Form 1065) as guaranteed payments to be included in the partner's gross income. Otherwise, the insurance plan will not be considered to be established under the business.

**Shareholders.** For more-than-2-percent shareholders, the policy can be either in the name of the S corporation or in the name of the shareholder. The shareholder can either pay the premiums or the S corporation can pay them and report the premium amounts on Form W-2 as wages to be included in the shareholder's gross income. However, if the policy is in the shareholder's name and the shareholder pays the premiums, the S corporation must reimburse the shareholder and report the premium amounts on Form W-2 as wages to be included in the shareholder's gross income. Otherwise, the insurance plan will not be considered to be established under the business. For more information see IRS Publication 535, *Business Expenses*. **IRS Tax Tip 2012-51.**

**WORKERS' COMPENSATION.** Under state law, police, firemen and other city employees could receive their salary for a set time during which the employee was unable to work because of an on-the-job injury. The IRS ruled that such payments were in the nature of workers' compensation and were excludible, under I.R.C. § 104(a)(1), and not subject to withholding. **Ltr. Rul. 201210012, Nov. 29, 2011.**

Under state law, state employees who cannot work due to work-related injuries, may receive disability payments. The IRS ruled that such payments were in the nature of workers' compensation and state employees may exclude such disability payments from taxable income. **Ltr. Rul. 201211003, Dec. 7, 2011.**

## IN THE NEWS

**ANIMALS.** "A federal magistrate judge on Thursday [March 22, 2012] ordered the Obama administration to alert drug makers that the government may soon ban the common agricultural use of

popular antibiotics in animals because the practice may encourage the proliferation of dangerous infections and imperil public health.

"The order, issued by Judge Theodore H. Katz of the Southern District of New York, has the effect of restarting a process that the Food and Drug Administration began 35 years ago in hopes of preventing penicillin and tetracycline, two of the nation's most popular antibiotics, from losing their effectiveness in humans because of their widespread use in animal feed to promote growth in livestock like chickens, pigs and cattle.

"The order comes two months after the Obama administration announced restrictions on agricultural uses of cephalosporins, a critical class of antibiotics that includes drugs like Cefzil and Keflex, which are commonly used to treat pneumonia, strep throat and skin and urinary tract infections. The F.D.A. is expected to issue within days draft rules that would bar the use of penicillin and tetracycline — highly popular in agricultural settings — in animal feed to further growth, the same issue tackled by Judge Katz. A decade ago, the F.D.A. banned indiscriminate agricultural use of a powerful class of antibiotics, called fluoroquinolones, that includes the medicine Cipro. . . ." Gardiner Harris, "F.D.A. Is Ordered to Restrict Antibiotics' Use in Livestock," *New York Times*, March 23, 2012; <http://www.nytimes.com/2012/03/24/health/fda-is-ordered-to-restrict-use-of-antibiotics-in-livestock.html?partner=rss&emc=rss>

**PAYMENT LIMITATIONS.** "Senators Charles Grassley of Iowa and Tim Johnson of South Dakota have introduced a new bill to limit farm payments. It's designed to match up with anticipated changes to farm programs in the next farm bill. Grassley, who has fought for payment limits in the past, says the likely elimination of direct payments made the new legislation necessary. 'It still calls for a 250-thousand dollar overall cap for married couples — and it maintains a hard cap on marketing loan gains,' Grassley says. The bill also calls for a cap on the overall amount a farmer can receive in safety net payments — but Grassley says that would not include crop insurance supports or payments. 'For instance, if we were to adopt a shallow loss program, it would set a limit of 50-thousand dollars — or 100-thousand per couple — that a farmer could receive,' he says. Grassley says the bill also attempts to close the loopholes in 'actively engaged' provisions of the law." Ken Anderson, March 21, 2012, *Brownfield Online*, <http://brownfieldadnews.com/2012/03/21/new-payment-limits-bill-introduced-in-senate/>

**RURAL HOUSING.** The New York Times has reported that the U.S. Department of Agriculture is considering requiring an extensive environmental review before issuing mortgages, under the Rural Housing Program and the Rural Business and Cooperative Program, to people who have leased their land for oil and gas drilling. "The proposal by the Agriculture Department, which has signaled its intention in e-mails to Congress and landowners, reflects a growing concern that lending to owners of properties with drilling leases might violate the National Environmental Policy Act, known as NEPA, which requires environmental reviews before federal money is spent. Because that law covers all federal agencies, the department's move raises questions about litigation risks for other agencies, legal experts said." Ian Urbina, "Mortgages for Drilling Properties May Face Hurdle," *New York Times*, March 18, 2012.



**Please note that previous dates were incorrect - see below for correct dates. Brochures in the mail are also incorrect and replacement brochures will be sent soon. We regret the error.**

## **AGRICULTURAL TAX SEMINARS**

by Neil E. Harl

**May 7-8, 2012**

**I-80 Quality Inn, Grand Island, NE**

The seminars will be held on Monday and Tuesday from 8:00 am to 5:00 pm. Registrants may attend one or both days, with separate pricing for each combination. On Monday, Dr. Harl will speak about farm and ranch income tax. On Tuesday, Dr. Harl will cover farm and ranch estate and business planning. Your registration fee includes written comprehensive annotated seminar materials for the days attended and lunch. **Visit [www.agrilawpress.com](http://www.agrilawpress.com) to register online.**

The topics include:

### **Monday, May 7, 2012 FARM INCOME TAX**

#### **New Legislation**

#### **Reporting Farm Income**

- Leasing land to family entity
- Constructive receipt of income
- Deferred payment and installment payment arrangements for grain and livestock sales
- Using escrow accounts
- Payments from contract production
- Items purchased for resale
- Items raised for sale
- Crop insurance proceeds
- Weather-related livestock sales
- Sales of diseased livestock
- Reporting federal disaster assistance benefits
- Gains and losses from commodity futures

#### **Claiming Farm Deductions**

- Soil and water conservation expenditures
- Fertilizer deduction election
- Depreciating farm tile lines
- Farm lease deductions
- Prepaid expenses
- Preproductive period expense provisions
- Regular depreciation, expense method depreciation, bonus depreciation
- Paying rental to a spouse
- Paying wages in kind
- Section 105 plans

#### **Sale of Property**

- Income in respect of decedent
- Sale of farm residence
- Installment sale including related party rules
- Private annuity
- Self-canceling installment notes
- Sale and gift combined.

#### **Like-Kind Exchanges**

- Requirements for like-kind exchanges
- "Reverse Starker" exchanges
- What is "like-kind" for realty
- Like-kind guidelines for personal property
- Partitioning property
- Exchanging partnership assets

#### **Taxation of Debt**

- Turnover of property to creditors
- Discharge of indebtedness
- Taxation in bankruptcy.

### **Tuesday, May 8, 2012**

### **FARM ESTATE AND BUSINESS PLANNING**

#### **New Legislation**

#### **The Liquidity Problem**

#### **Property Held in Co-ownership**

- Federal estate tax treatment of joint tenancy
- Severing joint tenancies and resulting basis
- Joint tenancy and probate avoidance
- Joint tenancy ownership of personal property
- Other problems of property ownership

#### **Federal Estate Tax**

- The gross estate
- Special Use Valuation
- Family-owned business deduction recapture
- Property included in the gross estate
- Traps in use of successive life estates
- Basis calculations under uniform basis rules
- Valuing growing crops
- Claiming deductions from the gross estate
- Marital and charitable deductions
- Taxable estate
- The unified credit and other credits
- Unified estate and gift tax rates

- Generation skipping transfer tax, including later GST consequences for transfers in 2010

- Federal estate tax liens
- Undervaluations of property
- Reopening an examination

#### **Gifts**

- Reunification of gift tax and estate tax
- Gifts of property when debt exceeds basis

#### **Use of the Trust**

#### **The General Partnership**

- Small partnership exception

#### **Limited Partnerships**

#### **Limited Liability Companies**

- Developments with passive losses
- Corporate-to-LLC conversions
- New regulations for LLC and LLP losses

#### **The Closely-Held Corporation -**

- State anti-corporate farming restrictions
- Developing the capitalization structure
- Tax-free exchanges
- Would incorporation trigger a gift because of severance of land held in joint tenancy?
- "Section 1244" stock

#### **Status of the Corporation as a Farmer**

- The regular method of income taxation
- The Subchapter S method of taxation

#### **Financing, Estate Planning Aspects and Dissolution of Corporations**

- Corporate stock as a major estate asset
- Valuation discounts
- Dissolution and liquidation
- Reorganization

#### **Social Security**

- In-kind wages paid to agricultural labor

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